

AMENDED IN ASSEMBLY JUNE 26, 2001

AMENDED IN SENATE APRIL 19, 2001

SENATE BILL

No. 652

Introduced by Senator Torlakson

February 23, 2001

An act to amend Section 1192.7 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 652, as amended, Torlakson. Firearms: prohibited plea bargaining.

Existing law, as amended by an initiative measure approved by the voters at the March 7, 2000, primary election, prohibits plea bargaining where certain offenses have been charged. The initiative measure provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would, in addition, prohibit plea bargaining where it is alleged that the defendant provided a firearm to a minor, *as specified*, and the minor subsequently used the firearm in the commission of a crime, or the firearm was the instrument of the minor's death.

Because it would amend an initiative statute that requires a $\frac{2}{3}$ vote for amendment, the bill would require a $\frac{2}{3}$ vote.

By prohibiting plea bargaining relative to providing a firearm to a minor, where the minor subsequently uses the firearm in the commission of a crime, or the firearm is the instrument of the minor's death, this bill would increase incarceration costs to local governments, and increase local prosecution costs, and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1192.7 of the Penal Code is amended to
2 read:

3 1192.7. (a) Plea bargaining in any case in which the
4 indictment or information charges any serious felony, any felony
5 in which it is alleged that a firearm was personally used by the
6 defendant, in any case in which it is alleged that the defendant
7 provided a firearm to a minor *in violation of Section 12072* and the
8 minor used the firearm in the commission of a crime, or the firearm
9 was the instrument of the minor's death, or any offense of driving
10 while under the influence of alcohol, drugs, narcotics, or any other
11 intoxicating substance, or any combination thereof, is prohibited,
12 unless there is insufficient evidence to prove the people's case, or
13 testimony of a material witness cannot be obtained, or a reduction
14 or dismissal would not result in a substantial change in sentence.

15 (b) As used in this section "plea bargaining" means any
16 bargaining, negotiation, or discussion between a criminal
17 defendant, or his or her counsel, and a prosecuting attorney or
18 judge, whereby the defendant agrees to plead guilty or nolo
19 contendere, in exchange for any promises, commitments,
20 concessions, assurances, or consideration by the prosecuting
21 attorney or judge relating to any charge against the defendant or
22 to the sentencing of the defendant.

23 (c) As used in this section, "serious felony" means any of the
24 following:

25 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
26 (4) sodomy by force, violence, duress, menace, threat of great
27 bodily injury, or fear of immediate and unlawful bodily injury on
28 the victim or another person; (5) oral copulation by force,
29 violence, duress, menace, threat of great bodily injury, or fear of



1 immediate and unlawful bodily injury on the victim or another
2 person; (6) lewd or lascivious act on a child under the age of 14
3 years; (7) any felony punishable by death or imprisonment in the
4 state prison for life; (8) any felony in which the defendant
5 personally inflicts great bodily injury on any person, other than an
6 accomplice, or any felony in which the defendant personally uses
7 a firearm; (9) attempted murder; (10) assault with intent to commit
8 rape or robbery; (11) assault with a deadly weapon or instrument
9 on a peace officer; (12) assault by a life prisoner on a noninmate;
10 (13) assault with a deadly weapon by an inmate; (14) arson; (15)
11 exploding a destructive device or any explosive with intent to
12 injure; (16) exploding a destructive device or any explosive
13 causing bodily injury, great bodily injury, or mayhem; (17)
14 exploding a destructive device or any explosive with intent to
15 murder; (18) any burglary of the first degree; (19) robbery or bank
16 robbery; (20) kidnapping; (21) holding of a hostage by a person
17 confined in a state prison; (22) attempt to commit a felony
18 punishable by death or imprisonment in the state prison for life;
19 (23) any felony in which the defendant personally used a
20 dangerous or deadly weapon; (24) selling, furnishing,
21 administering, giving, or offering to sell, furnish, administer, or
22 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
23 methamphetamine-related drug, as described in paragraph (2) of
24 subdivision (d) of Section 11055 of the Health and Safety Code,
25 or any of the precursors of methamphetamines, as described in
26 subparagraph (A) of paragraph (1) of subdivision (f) of Section
27 11055 or subdivision (a) of Section 11100 of the Health and Safety
28 Code; (25) any violation of subdivision (a) of Section 289 where
29 the act is accomplished against the victim's will by force, violence,
30 duress, menace, or fear of immediate and unlawful bodily injury
31 on the victim or another person; (26) grand theft involving a
32 firearm; (27) carjacking; (28) any felony offense, which would
33 also constitute a felony violation of Section 186.22; (29) assault
34 with the intent to commit mayhem, rape, sodomy, or oral
35 copulation, in violation of Section 220; (30) throwing acid or
36 flammable substances, in violation of Section 244; (31) assault
37 with a deadly weapon, firearm, machinegun, assault weapon, or
38 semiautomatic firearm or assault on a peace officer or firefighter,
39 in violation of Section 245; (32) assault with a deadly weapon
40 against a public transit employee, custodial officer, or school



1 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
2 discharge of a firearm at an inhabited dwelling, vehicle, or aircraft,
3 in violation of Section 246; (34) commission of rape or penetration
4 by a foreign object in concert with another person, in violation of
5 Section 264.1; (35) continuous sexual abuse of a child, in violation
6 of Section 288.5; (36) shooting from a vehicle, in violation of
7 subdivision (c) or (d) of Section 12034; (37) intimidation of
8 victims or witnesses, in violation of Section 136.1; (38) terrorist
9 threats, in violation Section 422; (39) any attempt to commit a
10 crime listed in this subdivision other than an assault; (40) any
11 violation of Section 12022.53; and (41) any conspiracy to commit
12 an offense described in this subdivision.

13 (d) As used in this section, “bank robbery” means to take or
14 attempt to take, by force or violence, or by intimidation from the
15 person or presence of another any property or money or any other
16 thing of value belonging to, or in the care, custody, control,
17 management, or possession of, any bank, credit union, or any
18 savings and loan association.

19 As used in this subdivision, the following terms have the
20 following meanings:

21 (1) “Bank” means any member of the Federal Reserve System,
22 and any bank, banking association, trust company, savings bank,
23 or other banking institution organized or operating under the laws
24 of the United States, and any bank the deposits of which are
25 insured by the Federal Deposit Insurance Corporation.

26 (2) “Savings and loan association” means any federal savings
27 and loan association and any “insured institution” as defined in
28 Section 401 of the National Housing Act, as amended, and any
29 federal credit union as defined in Section 2 of the Federal Credit
30 Union Act.

31 (3) “Credit union” means any federal credit union and any
32 state-chartered credit union the accounts of which are insured by
33 the Administrator of the National Credit Union administration.

34 (e) The provisions of this section shall not be amended by the
35 Legislature except by statute passed in each house by rollcall vote
36 entered in the journal, two-thirds of the membership concurring,
37 or by a statute that becomes effective only when approved by the
38 electors.

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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